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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 245.

CHARLES W. GROGAN, et al.,
Petitioners,

v.

ANTHONY J. WACHTER,
Respondent.

PETITIONERS' REPLY BRIEF.

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I.

PRELIMINARY REMARKS.

Come now Petitioners, Charles W. Grogan, Desmond Lane, Robert Capps, Patrick Neary, Robert Cochran, Edward M. Fisher and August Mehrhoff, and pursuant to Rule No. 24 of the Rules of the Supreme Court of the United States submit their Reply to the Brief of Respondent in Opposition. Since Petitioners feel that the facts and their main arguments were adequately set forth in the Petition for a Writ of Certiorari, this Brief will be limited to a brief response to some of the issues raised by the Brief of Respondent in Opposition.

II.

ARGUMENT.

In attempting to demonstrate that Respondent's cause of action is not "arguably" an unfair labor practice under Section 8 of the Taft-Hartley Act, Respondent relies upon a recent decision of this Court in **National Labor Relations Board v. Allis-Chalmers Mfg. Co.**, ... U. S. ..., 35 L. W. 4623, 65 L. R. R. M. 2449 (June 12, 1967). **The Allis-Chalmers** case involved the question of whether a union committed an unfair labor practice by imposing a fine on a union member for crossing a validly imposed picket line during a strike. As Respondent recognizes, "this court did not question the union's power to expel from membership," and "the issue was whether a fine constitutes an unfair labor practice." (Brief of Respondent in Opposition, page 10.) Clearly, **Allis-Chalmers** does not shed any light on the issues involved in this case. Respondent also cites **Vaca v. Sipes**, 386 U. S. 171 (1967) as support for his position. This latter case is so totally dissimilar, factually and legally, from the instant case that it can have no possible relevance on the issues involved here. The plaintiff in **Sipes** was discharged by his employer because of physical disability. After his discharge the plaintiff sought the assistance of his union in prosecuting a grievance under the collective bargaining agreement in effect with his employer. The union processed the grievance through the preliminary stages provided for in the collective bargaining agreement, but declined to submit the grievance to arbitration because there was a lack of favorable medical evidence. The plaintiff then filed a suit alleging a breach by the union of its duty of fair representation. The plaintiff "was not expelled or suspended from union membership," **Sipes v. Vaca**, 397 S. W. 2d 658, 665 (Mo. 1965), and the case has no bearing on the issues before this Court.

It has been the Petitioners' contention throughout this case that since Respondent claims that he suffered loss of employment opportunities because of his expulsion from union membership, it is at least "arguable" that any persons responsible for this would be guilty of unfair labor practices under Section 8 of the Taft-Hartley Act. Respondent attempts to answer this by asserting that there is no evidence that the Union did in fact attempt to induce employers not to hire Respondent after his expulsion from union membership, and that if some employer refused to hire plaintiff because he was not a member of the Union, "the jurisdiction of this court is not preempted by a possible unfair labor practice by an unknown third person." (Brief of Respondent in Opposition, pages 10 and 11.) The only thing that Respondent has said is that he may not be able to **prove** that an unfair labor practice was committed. It is not important to determine what can be proved, however; the critical question is what did Respondent allege for his cause of action. He alleged, in substance, that union membership is a pre-requisite for employment in the trucking industry in the St. Louis area, and that he was unable to obtain substantial, gainful employment because of his expulsion from union membership (Pet. pars. 10, 13, 14, 28, 31, R. 6-7, 10, 11). Thus, his cause of action centers directly on the employment relationship and is not an internal union matter at all. He had already been restored to union membership (R. 237), so that it is only of interference with employment that he complains. At the trial of the case Petitioners offered to prove that Respondent filed unfair labor practice charges with the National Labor Relations Board against the Union and his former employer in connection with his expulsion from union membership, alleging that they had committed unfair labor practices. Petitioners also offered to prove that the National Labor Relations Board **asserted its**

jurisdiction and made an administrative investigation of the facts. This offer of proof was erroneously excluded as being immaterial to the issues in the case; but it is an indication that even Respondent believed that it was "arguable" that an unfair labor practice was involved.

Finally, Respondent raises the issue that this case arose before the passage of the Landrum-Griffin Act and future cases will involve a consideration of that Act. The simple answer to that is the fact that Landrum-Griffin did not affect the doctrine of federal preemption. That doctrine has the same force and effect after the passage of Landrum-Griffin as it did before.

III.

CONCLUSION.

For the reasons stated in this Reply Brief, as well as those stated in the Petition for a Writ of Certiorari, the Petition for a Writ of Certiorari should be granted.

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